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Ex Parte Comments - By ECFS

May 4, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208**

Dear Secretary Dortch:

The Massachusetts Department of Telecommunications and Cable (MDTC)[1] respectfully submits this ex parte letter in lieu of reply comments,[2] responding to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC or Commission) on November 18, 2011,[3] as well as to comments filed on February 24, 2012, in the above-referenced dockets. The FNPRM accompanies a Report and Order (Order) that substantively reforms two, interrelated systems: intercarrier compensation (ICC) and the high-

[1] The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

[2] The MDTC was unable to meet the March 30, 2012 reply comment deadline due to internal timing and staffing constraints.

[3] *In the Matter of Connect America Fund*; *A National Broadband Plan for Our Future*; *Establishing Just and Reasonable Rates for Local Exchange Carriers*; *High-Cost Universal Service Support*; *Developing an Unified Intercarrier Compensation Regime*; *Federal-State Joint Board on Universal Service*; *Lifeline and Link-Up*; *Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF/ICC Order and FNPRM*).

cost arm (High-Cost Fund) of the federal Universal Service Fund (USF or Fund). These reply comments focus on issues raised by the Commission's Internet Protocol (IP) to IP interconnection discussion

I. INTRODUCTION AND SUMMARY

The Commission, in its Order, determined that "IP interconnection between providers [is] critical."[4] The MDTC and commenters agree with, and support an efficient transition to, IP-based communications networks.[5] While the Commission explores the foundations and scope of its legal authority to create an IP interconnection framework, state commissions like the MDTC have already engaged in reviewing and resolving interconnection agreements (ICAs) that include provisions for IP-based traffic using their Section 252 authority. The Commission's final rules on IP-IP interconnection should reflect several issues the MDTC has observed in its state proceedings: 1) transitioning the E-911 public safety system quickly to handle IP-IP interconnection requirements will pose difficulties; 2) the Commission should not forego tariffing requirements as part of IP-IP interconnection and commercial agreements; 3) technical feasibility and existing agreements require careful attention; and 4) the Commission should avoid the pitfalls presented by potential arbitrage measures by carriers seeking to avoid IP-IP interconnection obligations.

II. STATE COMMISSIONS ARE REVIEWING ICAs THAT INCLUDE PROVISIONS FOR IP-BASED TRAFFIC WHILE THE FCC REFINES ITS IP-IP INTERCONNECTION AUTHORITY.

The Commission's FNPRM focuses on identifying enforceable legal grounds as a backstop to encouraging good faith negotiations regarding IP-IP interconnection between providers.[6] This is a worthwhile analysis due to the benefits of IP-IP interconnection and the need for enforceable provisions if the negotiating parties fail to reach an agreement.

As noted in its February 17, 2012, reply comments in these dockets, the MDTC supports IP-IP interconnection as a means to promote competitive entry and aid in the development of additional broadband networks.[7] As the Commission pursues this jurisdictional review, it should recognize that the MDTC and other state commissions play a key role and are already reviewing ICAs that include provisions for IP-based traffic and services, and they are resolving IP-related interconnection disputes.[8] These state efforts reveal several key issues – public safety, tariffing, technical feasibility, existing agreements, and potential arbitrage – which the Commission should also consider in the IP-IP interconnection portion of its rulemaking proceeding.

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[4] *CAF/ICC Order and FNPRM* at ¶ 1010.

[5] Wisconsin Public Service Commission (Wisconsin PSC) Comments, p. 8; California Public Utilities Commission (CA PUC) Comments, p. 1.

[6] *CAF/ICC Order and FNPRM* at ¶ 1351; Wisconsin PSC Comments, p. 9.

[7] MDTC Reply Comments, pp. 9-10 (filed Feb. 17, 2012).

[8] Wisconsin PSC Comments, p. 9.

A. The FNPRM Looks For the Best Legal Grounds, Including Section 251, To Create an IP-IP Interconnection Framework.

In the FNPRM, the Commission seeks comment on "the particular statutory authority that provides the strongest basis for the right to good faith negotiations for IP-to-IP interconnection."[9] This inquiry follows the Commission's expectation that "all carriers [will] negotiate in good faith in response to a request for IP-to-IP interconnection for the exchange of voice traffic."[10] As discussed below, the MDTC believes that Section 251 is the strongest basis for the right to good faith negotiations of IP-IP ICAs.

The Commission cites Sections 251(a)(1), 251(c)(2), 706; the Commission's ancillary authority under Title I of the Act; and other statutes as possible legal foundations.[11] Section 251(a)(1) mandates that all telecommunications carriers must interconnect with other telecommunications carriers, either directly or indirectly.[12] Section 251(c) imposes on incumbent local exchange carriers (ILECs) the duty to negotiate in good faith interconnection requests made by telecommunications carriers as well as provide for interconnection with those other carriers.[13] Section 706 requires the Commission to act to accelerate deployment of advanced telecommunications capability.[14] The Commission used its Title I ancillary authority to extend numerous common carrier requirements to interconnected VoIP providers, including E-911, federal USF contributions, CPNI, disability rights access, payment of federal regulatory fees, local number portability, FCC Form 477 data reporting, and discontinuance.[15] Each statute

[9] *CAF/ICC Order and FNPRM* at ¶ 1348.

[10] *Id.* at ¶ 1011.

[11] *Id.* at ¶ 1351; CA PUC Comments, p. 18.

[12] 47 U.S.C. § 251(a)(1).

[13] 47 U.S.C. §§ 251(c)(1) and (2).

[14] 47 U.S.C. § 1302(b) (2010). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996) (the Act), as amended in relevant part by the Broadband Data Improvement Act (BDIA), Pub. L. No. 110-385, 122 Stat. 4096 (2008).

[15] *See IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, FCC 05-116, at ¶¶ 22, 26-35 (rel. Jun. 3, 2005), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, FCC 06-94, at ¶¶ 35, 46-49 (rel. Jun. 27, 2006), *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, FCC 07-22, at ¶¶ 54-59 (rel. Apr. 2, 2007); *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, FCC 07-110, at ¶¶ 1, 21-24 (rel. Jun. 15, 2007); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, FCC 07-140, at ¶¶ 12-14 (rel. Aug. 8, 2007); *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-

provides some basis for extending ICA jurisdiction over either ILECs, common carriers, or other providers of IP-based voice traffic.

B. States Are Using Their Existing Section 252 Interconnection Authority to Review ICAs That Include Provisions for IP-Based Traffic.

While the Commission reviews its options, some providers are already seeking state approval of ICAs with IP-related provisions, consistent with the Commission's directive for good faith negotiations. Sections 251(c) and 252 require ILECs to negotiate ICAs with requesting telecommunications carriers. These voluntary negotiations must be sent to the state commission for review.[16] Negotiating parties can ask a state commission to mediate differences that arise from the negotiation pursuant to Section 252(a)(2). The parties can also request compulsory arbitration by the state commissions under Section 252(b) if negotiations are unsuccessful.[17]

The MDTC has first-hand experience with ICAs that touch upon IP-IP interconnection issues. For instance, many negotiated ICAs and ICA amendments approved by the MDTC include provisions for IP-based interconnections.[18] In addition to these ICAs arrived at through voluntary negotiation, the MDTC arbitrated an IP-related ICA in 2009 between Verizon MA and Intrado Communications, which resulted in a signed interconnection agreement.[19] The MDTC anticipates that the IP-related provisions arising under these ICAs, both voluntary and arbitrated, may be raised again in Massachusetts and elsewhere.[20]

244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, FCC 07-188, at ¶¶ 21, 24-29 (rel. Nov. 8, 2007); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, FCC 08-89, at ¶¶ 27-29 (rel. Jun. 12, 2008); *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039, FCC 09-40, at ¶¶ 9-13 (rel. May 13, 2009).

[16] 47 U.S.C. § 252(e).

[17] Moreover, under Section 252(e), state commissions are required to act to approve or reject the agreement and to issue written findings on the deficiencies of the agreements. Any party can seek judicial review of a state commission's decision in an appropriate federal district court under Section 252(e)(6). Other telecommunications carriers can adopt an approved interconnection agreement under Section 252(i).

[18] *See, e.g., Interconnection Agreement by and between Bandwidth.com CLEC, LLC and Verizon New England Inc., d/b/a Verizon Massachusetts for the Commonwealth of Massachusetts* (eff. Mar. 1, 2008), at § 8 (amendments omitted). The MDTC provides links to most MDTC-approved interconnection agreements through its website, *available at*: http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/telecommunications-division/doing-business/other-topics/interconnection-agreement.html (last viewed Mar. 15, 2012).

[19] *See Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts*, Docket No. D.T.C. 08-9, Arbitration Order (May 8, 2009) (*Intrado Order*), at 6-7 (describing Intrado's intended IP-based public safety service intended to interconnect to Verizon's network) *available at*: http://www.mass.gov/ocabr/docs/dtc/dockets/08-9/dtcfinord.pdf (last viewed Mar. 30, 2012); Agreement by and between Intrado Communications, Inc. and Verizon New England Inc., d/b/a Verizon Massachusetts, dated May 29, 2009, *available at*: http://www.mass.gov/ocabr/docs/dtc/telecom/icas/effective/05-29-09-ma-08-9-intrado-interconnection-agreement.pdf (last viewed Mar. 23, 2012).

[20] The California PUC also provides examples of arbitrating ICAs relating to IP services. CA PUC Comments, p. 17.

1. State ICA authority under Section 252 is tied to the FCC's interpretation of its authority under Section 251.

A state's Section 252 interconnection review authority is inextricably entwined with the interconnection rights set forth in Section 251. When carriers invoke their Section 251(c) rights to interconnect with ILECs, then state commissions such as the MDTC have express authority over those interconnection agreements pursuant to Section 252.[21] Further, as the Commission recently stated:

> Congress did not intend to restrict the arbitration authority of state commissions to matters arising under section 251(c). For example, several of section 252's jurisdictional and procedural provisions, on their face, refer generally to all interconnection disputes arising under section 251; these provisions do not restrict the arbitration authority of state commissions to matters arising under section 251(c).[22]

For instance, the Commission determined in its 2005 *T-Mobile Order* that the Section 252 interconnection framework extends to commercial mobile radio service (CMRS or wireless) providers, and therefore requires CMRS providers to negotiate with requesting ILECs for interconnection.[23] In addition, state commissions including the California Public Utilities Commission have asserted jurisdiction over interconnection disputes between two CLECs and between CLECs and CMRS providers.[24] However, when state commissions assert such jurisdiction, their authority to adjudicate such a dispute is often questioned.[25]

The MDTC agrees with the Wisconsin Public Service Commission, the Commission, and others that states play an integral role in interconnection under Sections 251 and 252.[26] Further,

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[21] 47 U.S.C. §§ 251(c)(1), 251(c)(2)(D), and 252; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, FCC 96-325 (rel. Aug. 8, 1996) (*Local Competition First Report and Order*) (subsequent history omitted), at ¶¶ 133-137 (discussing states' role in fostering local competition under Sections 251 and 252).

[22] *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, As Amended*, WC Docket No. 10-143, GN Docket No. 09-51, and CC Docket No. 01-92, Declaratory Ruling, 26 FCC Rcd 8259, FCC 11-83 (rel. May 26, 2011) (*Interconnection Clarification Order*), at ¶ 20. *See also Ohio Bell Tel. Co. vs. Ohio PUC*, Case No. 2:09-CV-00918, SD Ohio (Jan. 6, 2012), 2012 WL 32659 (upholding the state commission's use of both sections 251(a) and 251(c) in its resolution of an interconnection agreement arbitration regarding companies' points of interconnection), *available at*: http://scholar.google.com/scholar_case?q=intrado&hl=en&as_sdt=4,111,126,275,276,280,281,293,294,301,302,303,338,339,343,344,356,357,364,365,366,381&case=6359565616861290634&scilh=0 (last viewed Mar. 19, 2012).

[23] *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, FCC 05-42 (2005) (*T-Mobile Order*), at ¶¶ 9, 16, *petitions for review pending*, *Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005); *CAF/ICC Order and FNPRM* at ¶ 1324.

[24] CA PUC Comments, p. 8.

[25] *Id*.

[26] Wisconsin PSC Comments, p. 9; CA PUC Comments, pp. 6, 8; *CAF/ICC Order and FNPRM* at ¶ 1323.

the MDTC agrees with the California Public Utilities Commission that state commissions have expended substantial time and energy in adjudicating interconnection disputes involving IP-based voice traffic due to jurisdictional disputes.[27] As the Commission develops and refines the scope of Section 251 authority regarding IP-IP interconnections, the Commission should also refine state jurisdiction to review and approve ICAs involving IP-IP interconnections.

2. The Commission can promote voice competition and accelerate broadband deployment by clarifying states' Section 252 jurisdiction over IP-IP interconnection agreements.

The Commission should remain on its path towards increased competitive entry in the voice and broadband markets through additional protections for IP-IP interconnection. The Commission can remove states' jurisdictional ambiguity and accelerate dispute resolution by expressly finding that state commissions retain their Section 252 authority for IP-IP interconnections. Clarifying states' authority under Section 252 will minimize regulatory uncertainty; increase voice competition; speed broadband deployment for voice carried over IP networks; and bolster all parties' incentives to negotiate in good faith.[28]

Similarly, the Commission should revisit and expand upon Section 51.100(b) of its rules. Section 51.100(b) states that:

> A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.[29]

As part of its rationale in adopting this rule, the Commission specified:

> Under a contrary conclusion, a competitor would be precluded from offering information services in competition with the incumbent LEC under the same arrangement, thus increasing the transaction cost for the competitor. We find this to be contrary to the pro-competitive spirit of the 1996 Act. By rejecting this outcome we provide competitors the opportunity to compete effectively with the

[27] *See, e.g.*, CA PUC Comments, pp. 1, 10. *See also Palmerton Telephone Company v. Global NAPs*, Pennsylvania Public Utility Commission Docket C-2009-2093336, Opinion and Order (Public Meeting held Feb. 11, 2010) (*PA PUC GNAPs Order*). In this decision, the Pennsylvania PUC indicated that:

> A large part of the evidentiary record in this proceeding has been consumed in an attempt to ascertain whether the Commission's subject matter jurisdiction is dependent upon the traffic protocols of the calls transported by [Company A] and indirectly terminated at [Company B's] facilities rather than on the overall transportation function that, in and of itself, legally and technically constitutes a common carrier telecommunications service *irrespective* of the technical classification of the traffic being carried.

PA PUC GNAPs Order, pp. 8-9.

[28] *Local Competition First Report and Order* at ¶ 149 (describing how Section 252 provides the incentive to negotiate in good faith); *CAF/ICC Order and FNPRM* at ¶ 653.

[29] 47 C.F.R. § 51.100(b).

> incumbent by offering a full range of services to end users without having to provide some services inefficiently through distinct facilities or agreements.[30]

Such a rule continues to make sense as many services transition to IP-based technology. Requiring IP-IP interconnection promotes competitive entry and will aid in the development of additional broadband networks.[31]

The Commission can remove any lingering doubt as to states' authority to review and approve IP-IP ICAs if, as it already contemplates, it expands the scope of its *T-Mobile Order* to include all telecommunications carriers for IP-IP interconnection purposes under Sections 251 and 252.[32] There is also a need for the Commission to reaffirm that information services may be offered or obtained with telecommunications services through Section 251/252 ICAs,[33] and for the Commission to affirm that state commissions have authority under Section 252 to mediate and arbitrate disputes involving those information services.

C. Several Key Issues Involving IP-IP Interconnections Need To Be Addressed.

The MDTC identifies several issues the Commission should consider in deciding whether and how to impose IP-IP interconnection requirements. A sizable portion of the existing telecommunications infrastructure continues to use legacy technology, including the 911/E-911 public safety system, and an all-IP communications network is still far from a reality. The transition will take time and substantial investment. With these considerations in mind, the Commission should not override well-established interconnection arrangements to mandate a flash-cut to permit only IP-IP interconnection arrangements. Instead, IP-IP interconnection requirements should complement and build from existing requirements.

1. Modernizing the E911 Public Safety System for IP-IP interconnection must be gradual.

If the Commission decides to impose specific technical requirements on IP-IP interconnections, it should carefully consider public safety requirements and infrastructure. Existing public safety communications infrastructure, primarily the 911/E-911 system, relies substantially on legacy network architecture. While the Commission and states are in the midst of considering ways to move towards a Next Generation 911 (NG911) network,[34] the Commission's Public Safety Bureau recently acknowledged that:

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[30] *Local Competition First Report and Order* at ¶ 995.

[31] MDTC Reply Comments, WC Docket 10-90 (filed Feb. 17, 2017), pp. 9-10.

[32] *CAF/ICC Order and FNPRM* at ¶ 1324; CA PUC Comments, pp. 8, 10.

[33] *Supra* at 6-7; *Intrado Order*, pp. 57-58.

[34] *See, e.g., Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*; *Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Notice of Proposed Rulemaking, FCC 11-134 (rel. Sept. 22, 2011); MASS. GEN. LAWS ch. 6A, § 18B(h) (the State 911 Department "shall review and assess new communications technologies that may include, but are not limited to, wireless, video, broadband, and IP-based applications that may serve as the next generation 911 technology platforms, consistent with FCC decisions and federal law"), § 18D(c) (the State 911 Department "shall develop and maintain a statewide plan for the

> A number of the public safety answering points (PSAPs) or 911 call centers that handle 911 calls still lack broadband connectivity to a service provider network, which is necessary to support the evolution to NG911. ***Providing this connectivity on a nationwide scale will require substantial funding.***[35]

The Public Safety Bureau also pointed out the inefficient nature of the existing 911/E-911 system where newer voice communications were concerned:

> When a wireless or VoIP user places a 911 call on a legacy network, the service provider handles the call with a complex system of routing, re-routing, and look-up designed to emulate the legacy technology.[36]

Notwithstanding these inefficiencies, the move to a NG911 system (or even modernization of the existing 911/E-911 system) cannot and will not happen overnight.[37] If the Commission imposes particular technical requirements on IP-IP interconnections without further consideration of the public safety communications network, then the Commission will risk disrupting existing 911/E-911 connectivity requirements and potentially inhibit the move towards an NG911 system.

The Commission should clarify that any IP-IP interconnection requirements do not affect 911/E-911 traffic arrangements. By way of example, the Commission is considering IP-specific point-of-interconnection requirements that vary from the existing one-per-LATA requirement, yet the Commission fails to inquire about or contemplate public safety considerations.[38] Although generic points-of-interconnection may be or are often distinct from 911/E-911-specific points-of-interconnection,[39] the Commission should affirm that any deviations it makes from the one-per-LATA requirement for general interconnections do not implicate point-of-interconnection arrangements in the 911/E-911 network. The Commission should also seek further comment on how any proposed changes to its technical interconnection requirements would implicate public safety considerations, and should revisit its interconnection regulations to

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implementation and maintenance of enhanced 911 service consistent with federal law and regulation, including next generation 911 and IP-enabled 911 services").

[35] Public Safety and Homeland Security Bureau White Paper, *A Next Generation 911 Cost Study: A Basis for Public Funding Essential to Bringing a Nationwide Next Generation 911 Network to America's Communications Users and First Responders* (Sept. 2011), at 2 (emphasis added).

[36] *Id.*

[37] For instance, the Massachusetts State 911 Department predicts that the Massachusetts NG911 network will not be implemented until *at least* fiscal year 2016. *See Petition of the State 911 Department for Approval of Fiscal Year 2012 Expenditures*, D.T.C. Docket No. 12-3, Petition, Addendum to Exhibit B (filed Mar. 1, 2012), at 4.

[38] *CAF/ICC Order and FNPRM* at ¶¶ 1316-1319, 1366-1367, 1372-1373. Two point-of-interconnection proposals raise the issue of whether to create regional points-of-interconnection among several states or to require a single point-of-interconnection per state (and to move away from the one-per-LATA requirement to reflect more modern communications technologies). *Id.* at ¶ 1372; T-Mobile Comments, pp. 5-7; XO Communications Comments, pp. 16-17.

[39] For a general description of the 911/E-911 network in Massachusetts, see the *Intrado Order* at pp. 3-6.

consider how to accommodate the transition to a NG911 (or more modernized 911/E-911) network architecture and other public safety implications.

2. Tariffing requirements are integral to fostering IP-IP interconnections.

While the Commission states that "continuing to rely on tariffs . . . is in the public interest," it asks whether commercial agreements are sufficient vehicles to achieve IP-IP interconnection, and whether eventually to eliminate federal tariffing requirements.[40] The Commission should not rely on commercial agreements alone to foster IP-IP interconnection and should recognize and preserve the value of tariffing as part of the interconnection agreement negotiation process. Presently, most, if not all, interconnection agreements rely on references to tariffs in some form. This practice is much more efficient than carriers having to devote substantial time and effort over every rate, term, and condition in every single ICA.[41]

Further, the MDTC is concerned about the effect that elimination of federal tariffing requirements would have on state tariffing requirements. Barring carrier agreement otherwise, federal law limits the time that state commissions have in reviewing agreements and arbitrating disputes.[42] When carriers use tariff references, they are subject to a different review process (at least for intrastate rates). For instance, many states, including Massachusetts, require the incumbents to notify carriers with which they have ICAs when they amend applicable tariff rates, terms, and conditions referenced in the agreement.[43] Through this process, carriers may dispute the tariff amendments if they feel that the amendments are unreasonable and discriminatory.[44] Consequently, the Commission should retain its tariffing requirements to complement carrier agreements.

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[40] *CAF/ICC Order and FNPRM* at ¶¶ 1322-1323 (maintaining a role for tariffs during the transition but urging an increased reliance on interconnection agreements, with possible forbearance from the federal tariffing requirements), ¶ 1364 (inquiring whether carriers should be required to tariff IP-to-TDM conversion rates).

[41] *Compare* Charter Comments, p. 8; CBeyond, Earthlink, Integra Telecom, and tw telecom Joint Comments (Joint Comments), pp. 17-18 (urging the retention of tariffing by CLECs since tariffing "reduces transaction costs by eliminating the need for a [CLEC] to devote substantial time and resources to negotiating countless individual agreements with countless different carriers" and it is more efficient for carriers to access rates via tariffs "rather than via negotiated agreements"); Comcast Comments, pp. 11-13 (noting that elimination of tariffing requirements would be "impractical … [and] would be costly and inefficient"); U.S. Telepacific and MPower Communications Joint Comments, pp. 4-5 (indicating that requiring competitive providers "to potentially negotiate individual agreements with hundreds of other carriers … is often not a practical option, would be a drain on resources, and will ultimately lead to consumer-borne costs" and that "the Commission should ensure that [tariffs] remain a viable option for all LECs").

[42] 47 U.S.C. §§ 252(b)(4)(C) and 252(e)(4).

[43] *Investigation by the Dep't on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, Filed with the Dep't on Aug. 27, 1999, to Become Effective on Sept. 27, 1999, by New England Tel. &Tel. Co. d/b/a Bell Atlantic-Mass.*, Docket No. D.T.E. 98-57, Order (Mar. 24, 2000), at 22-23 (requiring the ILEC, now Verizon, to provide electronic notification of proposed tariff changes to all competitive carriers with whom it has resale and interconnection agreements on or about the same day that the proposed tariff changes are filed with the MDTC). In Massachusetts, Verizon's Tariff No. 17 contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

[44] MASS. GEN. LAWS ch. 159, §§ 14, 17, and 19.

3. The Commission should also consider technical feasibility and other issues when clarifying its IP-IP interconnection framework.

IP-IP interconnection requirements should be tied to whether a carrier's interconnection request is technically feasible at a specific point of interconnection. The technical feasibility requirement is firmly entrenched in Section 251(c)(2)(B) and the Commission's existing rules for interconnection with ILECs.[45] Technical feasibility is also inherently a part of existing commercial agreements, because providers cannot (and will not) agree to generic points of interconnection where it is not technically feasible to do so (or the parties are unwilling to shoulder the costs for particular interconnection points where the technical capabilities do not yet exist).

Contrary to certain competitive providers' assertions, an IP-IP interconnection mandate will require the Commission to revisit its existing interconnection rules.[46] First, if the Commission does not limit IP-IP interconnection requirements to ILECs (or otherwise expand upon the interconnection requirements under sections 251(a) and 251(c)), then the Commission will need to reflect the changes in Section 51.305 of its rules,[47] which currently applies only interconnection with ILECs.

Second, the Commission will need to consider modifying its interconnection rules to reflect that they are technology-neutral. While many of the existing interconnection rules, as drafted, exemplify this principle,[48] an across the board clarification will ensure state commission authority to oversee disputes over the technical feasibility of certain points of interconnection.[49]

Third, the Commission should modify Section 51.305(a)(2) to include examples of technically-feasible points of interconnection for purposes of IP-IP interconnection.[50] As currently drafted, the examples provided in the Commission's proposed rules reflect legacy circuit-switched architecture and fail to account for modern IP interconnection arrangements.

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[45] 47 U.S.C. § 251(c)(2)(B); 47 C.F.R. §§ 51.305(a)(2) and 51.305(c)-(g).

[46] *See, e.g.*, Joint Comments, p. 15.

[47] *CAF/ICC Order and FNPRM* at ¶ 1324 (seeking comment on whether to build upon the *T-Mobile Order* and expand its interconnection rules to all telecommunications carriers).

[48] *See, e.g.*, 47 C.F.R. §§ 51.305(c)-(g); Charter Comments, p. 8 ("Section 251 and FCC regulations have aided competitive entry because these rules are (largely) technology agnostic"). The Commission and most commenters also acknowledge that the related statutory provisions are also technology-neutral. *See CAF/ICC Order and FNPRM* at ¶¶ 1342, 1352, 1381; CA PUC Comments, p. 14; Verizon Comments, pp. 25-27; XO Communications Comments, p. 13; Time Warner Comments, p. 6. *See also* 47 U.S.C. § 153(46) (defining "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*") (emphasis added).

[49] 47 C.F.R. § 51.305(e) ("An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible").

[50] 47 C.F.R. § 51.305(a)(2) (indicating that technically feasible points include "*at a minimum*" certain examples) (emphasis added).

Fourth, the Commission should amend its interconnection rules to address interconnection with an ILEC's affiliates and competitive providers' use of affiliates. The Commission observes that some ILECs may be offering IP services through affiliates,[51] and that the D.C. Circuit has already held that "the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."[52] The Commission inquires as to when an affiliate "should be treated as an incumbent LEC under circumstances beyond those squarely addressed in that decision."[53]

Based on the comments presented by certain ILECs, the Commission should address potential impermissible circumvention of interconnection requirements by amending its rules to provide for interconnection of affiliate-owned infrastructure. The Commission also should firmly establish that an ILEC's, or even a competitive provider's, move to or use of an IP infrastructure does not automatically alter the company's classification or interconnection obligations. ILEC commenters assert that when they offer IP-based services, they should no longer be subject to the Section 251(c) requirements.[54] To increase regulatory certainty, to increase competition, and to help prevent arbitrage over the issue(s), the Commission must update its regulations to include provisions where IP-based interconnections with providers' affiliates would be appropriate. Furthermore, the Commission should affirm that the use of a particular underlying technology does not alter the provider's regulatory classification or its statutory rights and obligations.

Finally, the MDTC agrees with commenters that the Commission should avoid establishing new interconnection rules that would alter existing interconnection arrangements, at least in the near term.[55] Although the American communications network may achieve a ubiquitous level of IP coverage at some point in the future, that reality does not exist today. While IP is currently interspersed throughout the communications network, much of the network still relies on legacy technologies and architecture.[56] In addition, IP-based architecture will often become less prevalent as one travels further away from major metropolitan areas. As a result, the MDTC concurs that the Commission should not yet alter the right of competitors to interconnect at a single point of interconnection per LATA.[57] Further, it would be premature for the Commission to impose a requirement that only IP-IP interconnection be permitted. Instead, the Commission should clarify that IP-IP interconnection is one permissible form of interconnection, based on the realities of existing network infrastructure, and it should affirm existing interconnection requirements. Carriers should not be precluded from entering into good-faith negotiations in order to amend their existing interconnection arrangements.

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[51] *CAF/ICC Order and FNPRM* at ¶ 1388.

[52] *CAF/ICC Order and FNPRM* at ¶ 1388, *citing Ass'n of Commc'ns Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001), amended by *Ass'n of Commc'ns Enterprises v. FCC* (D.C. Cir. Jan. 18, 2001).

[53] *CAF/ICC Order and FNPRM* at ¶ 1388.

[54] Verizon and Verizon Wireless Comments, p. 10; AT&T Comments, p. 39.

[55] Joint Comments, p. 16; Comcast Comments, pp. 12-13.

[56] Comcast Comments, p. 25; NECA, NTCA, OPASTCO, and WTA Joint Comments, p. 39.

[57] Joint Comments, p. 16; MetroPCS Comments, pp. 10-11.

III. CONCLUSION

While the Commission concludes its regulatory authority review under Section 251 and other statutes, states are using their Section 252 authority over interconnection agreements to resolve disputes involving IP traffic. Public safety impacts and technical feasibility should guide the Commission's directives on IP-IP interconnections. Finally, the Commission should support tariffing requirements and not rely on commercial agreements alone to promote IP-IP interconnection.

Respectfully submitted,
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